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20 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

21 UNITED STATES OF AMERICA)

22 and)

23 VENTURA COUNTY AIR POLLUTION)
24 CONTROL DISTRICT,)

25 Plaintiffs,)

26 v.)

27 DIVERSIFIED PANEL SYSTEMS, INC.,)

28 Defendant.)

Civil No.

C O M P L A I N T

1 Plaintiffs United States of America, by the authority of the Attorney General
2 of the United States and through the undersigned attorneys, acting at the request of
3 the Administrator of the United States Environmental Protection Agency ("EPA"),
4 and the Ventura County Air Pollution Control District ("VCAPCD"), hereby file
5 this complaint and allege as follows:

6 **NATURE OF ACTION**

7 1. This is a civil action brought against Diversified Panel Systems, Inc.
8 ("DPSI") to obtain injunctive relief and assessment of civil penalties for violations
9 of the Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et seq.* The violations alleged in
10 the complaint occurred at DPSI's polystyrene block manufacturing and processing
11 facility in Oxnard, Ventura County, California (the "Facility").

12 **JURISDICTION AND VENUE**

13 2. This Court has jurisdiction over the subject matter of this action
14 pursuant to 28 U.S.C. §§ 1331, 1345 and 1355, and Section 113(b) of the CAA, 42
15 U.S.C. § 7413(b).

16 3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and
17 1395, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), because the violations
18 alleged herein occurred and/or are occurring at DPSI's facility which is located in
19 this district.

20 4. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, the EPA
21 Administrator approved "the State of California Implementation Plan for
22 Achieving and Maintaining the National Ambient Air Quality Standards" (the
23 "California SIP"), which was officially submitted to EPA on February 21, 1972.
24 40 C.F.R. §§ 52.220(a)-(b). Since that time, the EPA Administrator has approved
25 numerous revisions of the California SIP, as specified at 40 C.F.R. § 52.220(c).
26 The California SIP is independently enforceable by Plaintiff United States under
27 Section 113 of the Act, 42 U.S.C. § 7413.
28

5. Notice of the violations set forth in this Complaint was provided to DPSI and the State of California at least thirty days prior to the filing of this Complaint, pursuant to Sections 113(a) and (b) of the CAA, 42 U.S.C. §§ 7413(a), (b).

6. Plaintiff VCAPCD has primary responsibility for control of air pollution from all sources other than emissions from motor vehicles within Ventura County, and the California SIP includes the VCAPCD rules governing air pollution emissions. VCAPCD has authority to enforce its air pollution emissions rules.

DEFENDANT

7. Defendant DPSI is, and was at all time relevant hereto, a California corporation whose principal place of business is Oxnard, Ventura County, California.

8. DPSI is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and VCAPCD Rule 2(A).

COUNT 1 - CONSTRUCTION OF EMISSIONS SOURCE WITHOUT A PERMIT

9. On or about October 1, 2000, DPSI commenced construction of the Facility.

10. The polystyrene foam block manufacturing process carried out at the Facility produces pentane emissions, pentane being a volatile organic compound (“VOC”).

11. The Facility is a “new stationary source” within the meaning of Sections 111(a) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a) and 7602(z), and VCAPCD Rule 11(12).

12. The Facility is a new “emissions unit” and/or incorporates one or more new “emissions units” within the meaning of VCAPCD Rule 11(4).

1 13. At the time DPSI commenced construction of the Facility, it had not
2 obtained an Authority to Construct (“ATC”) Permit as required by VCAPCD Rule
3 10(A)(1), and it did not obtain an ATC Permit until on or about February 7, 2002.

4 14. Beginning on the day that DPSI commenced construction of the
5 Facility until DPSI obtained an ATC Permit, each day that DPSI did not have an
6 ATC Permit constitutes a separate violation of VCAPCD Rule 10(A)(1).

7 15. Under Section 113(b) of the CAA, 42 U.S.C. § 7413(b); the Federal
8 Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat.
9 890 (1990), *amended by* Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373
10 (1996) (28 U.S.C. § 2461 note); 61 Fed. Reg. 69,360 (Dec. 31, 1996); and 69 Fed.
11 Reg. 7121 (Feb. 13, 2004), codified at Title 40 of the Code of Federal Regulations
12 (CFR) Part 19, DPSI is liable for a civil penalty of up to \$27,500 per day for each
13 violation of VCAPCD Rule 10(A)(1).

14
15 **COUNT II - OPERATION OF EMISSIONS SOURCE**
16 **WITHOUT A PERMIT**

17 16. Paragraphs 1 through 15 are realleged and incorporated herein by
18 reference as though fully set forth herein.

19 17. On or about February 1, 2001, DPSI commenced operation of the
20 Facility.

21 18. At the time DPSI commenced operation of the Facility, it had not
22 obtained a Permit to Operate (“PTO”) as required by VCAPCD Rule 10(B)(1), and
23 it did not obtain a Temporary PTO (“TPTO”) until on or about May 1, 2003.

24 19. DPSI has yet to obtain a permanent PTO as required by VCAPCD
25 Rule 10(B)(1).

26 20. Beginning on the day that DPSI commenced operation of the Facility
27 until DPSI obtained a TPTO, each day that DPSI did not have a PTO or TPTO
28 constitutes a separate violation of VCAPCD Rule 10(B)(1).

21. Under Section 113(b) of the CAA, 42 U.S.C. § 7413(b); the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (1990), *amended by* Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 2461 note); 61 Fed. Reg. 69,360 (Dec. 31, 1996); and 69 Fed. Reg. 7121 (Feb. 13, 2004), codified at Title 40 of the Code of Federal Regulations (CFR) Part 19, DPSI is liable for a civil penalty of up to \$27,500 per day for each violation of VCAPCD Rule 10(B)(1).

22. Under Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and based on its past history of operating the Facility without applying for or obtaining a PTO and its continuing lack of a permanent PTO, DPSI is subject to issuance of an injunction, requiring it to obtain a permanent PTO and requiring that it take all appropriate and necessary measures to ensure compliance with all applicable emissions limitations specified in the PTO and as otherwise provided by law.

23. Plaintiffs are informed and believe that, unless enjoined by this Court pursuant to the provisions of Section 113(b) of the CAA, 42 U.S.C. § 7413(b), DPSI will continue to violate the statutory requirements and administrative rules and regulations governing operators of emissions units at stationary sources in the manner alleged herein.

REQUEST FOR RELIEF

WHEREFORE, the United States respectfully requests that the Court grant the following relief:

A. That the Court assess a civil penalty against DPSI in the amount of \$27,500 per day for each violation of the VCAPCD Rules as alleged in this Complaint;

B. That the Court issue an order requiring DPSI to obtain a permanent PTO and requiring that DPSI take all appropriate and necessary measures to ensure compliance with all applicable emissions limitations specified in the PTO and as otherwise provided by law;

1 C. That the United States be awarded its costs and fees incurred this
2 action; and

3 D. That the Court grant such other relief as is deemed just and proper.
4

5 Respectfully submitted,

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